

Federal Communications Commission

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the report. Further, any such application for inspection shall be made available to the public throughout the period during which the report itself is made available to the public.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 397; 18 U.S.C. 207(j))

[40 FR 7314, Feb. 19, 1975, as amended at 45 FR 85027, Dec. 24, 1980; 48 FR 44800, Sept. 30, 1983; 53 FR 39093, Oct. 5, 1988; 62 FR 51797, Oct. 3, 1997]

§0.461 Requests for inspection of materials not routinely available for public inspection.

Any person desiring to inspect Commission records which are not listed in §0.453 or §0.455 shall file a request for inspection meeting the requirements of this section.

(a)(1) The records in question must be reasonably described by the person requesting them, so as to permit their location by staff personnel. See §0.460(c).

(2) The person requesting records under this section may specify the form or format of the records to be produced.

(b)(1) Requests shall be captioned "Freedom of Information Act Request," shall be dated, shall list the telephone number (if any) of the person making the request and, for each document requested, shall set out all information known to the person making the request which would be helpful in identifying and locating the document.

(2) The request shall, in addition, specify the maximum search fee the person making the request is prepared to pay (see §0.467).

(c) If the records are of the kinds listed in §0.457 or if they have been withheld from inspection under §0.459, the request shall, in addition, contain a statement of the reasons for inspection and the facts in support thereof. In the case of other materials, no such statement need accompany the request; but the custodian of the records may require the submission of such a statement if he determines that the materials in question may lawfully be withheld from inspection.

(d)(1) Requests shall be delivered or mailed to the Managing Director, sent by electronic mail to <foia@fcc.gov>, or sent by facsimile. (For purposes of

this section, the custodian of the records is the Chief of the appropriate Bureau or Office.)

(2) If the request is enclosed in an envelope, the envelope shall be marked, "Freedom of Information Act Request."

(3) An original and two copies of the request shall be submitted. If the request is for materials not open to routine public inspection under §0.457(d) or §0.459, or if a request for confidentiality is pending pursuant to §0.459, one copy of the request will be mailed by the custodian of the records to the person who originally submitted the materials to the Commission.

(e) When the request is received by the Managing Director, it will be assigned to the Freedom of Information Act (FOIA) Control Office, where it will be date-stamped and assigned to the custodian of the records.

(f) Requests for inspection of records will be acted on as follows by the custodian of the records.

(1) If the Commission is prohibited from disclosing the records in question, the request for inspection will be denied with a statement setting forth the specific grounds for denial.

(2) If the records are the property of another agency, the request will be referred to that agency and the person who submitted the request will be so advised, with the reasons therefor.

(3) If it is determined that the Commission does not have authority to withhold the records from public inspection, the request will be granted.

(4) If it is determined that the Commission does have authority to withhold the records from public inspection, the considerations favoring disclosure and non-disclosure will be weighed in light of the facts presented, and the request will be granted, either conditionally or unconditionally, or denied.

(5) If there is a statutory basis for withholding part of a document only from inspection, that part will be deleted and the remainder will be made available for inspection.

(6) In locating and recovering records responsive to a FOIA request, only those records within the Commission's possession and control as of the date of

its receipt of the request shall be considered.

(g) The custodian of the records will make every effort to act on the request within 20 working days after it is received by the FOIA Control Office. If it is not possible to locate the records and to determine whether they should be made available for inspection within 20 working days, the custodian may, in any of the following circumstances, extend the time for action by up to 10 working days:

(1) It is necessary to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) It is necessary to search for, collect and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) It is necessary to consult with another agency having a substantial interest in the determination of the request, or among two or more components of the Commission having substantial subject matter interest therein.

The custodian of the records will notify the requester in writing of any extension of time exercised pursuant to paragraph (g) of this section. If it is not possible to locate the records and make the determination within the extended period, the person or persons who made the request will be provided an opportunity to limit the scope of the request so that it may be processed within the extended time limit, or an opportunity to arrange an alternative time frame for processing the request or a modified request, and asked to consent to an extension or further extension. If the requester agrees to an extension, the custodian of the records will confirm the agreement in a letter specifying the length of the agreed-upon extension. If he or she does not agree to an extension, the request will be denied, on the grounds that the custodian has not been able to locate the records and/or to make the determination within the period for a ruling mandated by the Freedom of Information Act, 5 U.S.C. 552. In that event, the custodian will continue to search for and/or assess the records and will

advise the person who made the request of further developments; but that person may file an application for review by the Commission. When action is taken by the custodian of the records, written notice of the action will be given.

(h)(1) Requesters who seek expedited processing of FOIA requests shall submit such requests, along with their FOIA requests, to the Managing Director, as described in §0.461(d). If the request is enclosed in an envelope, the envelope shall be marked "Request for Expedited Proceeding—FOIA Request." An original and two copies of the request for expedition shall be submitted, but only one copy is necessary if submitted by electronic mail. When the request is received by the Managing Director, it, and the accompanying FOIA request, will be assigned to the FOIA Control Office, where it will be date-stamped and assigned to the custodian of records.

(2) Expedited processing shall be granted to a requester demonstrating a compelling need that is certified by the requester to be true and correct to the best of his or her knowledge and belief.

(3) For purposes of this section, *compelling need* means—

(i) That failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) With respect to a request made by a person primarily engaged in disseminating information, there is an urgency to inform the public concerning actual or alleged Federal Government activity.

(4)(i) Notice of the determination as to whether to grant expedited processing shall be provided to the requester by the custodian of records within 10 calendar days after receipt of the request by the FOIA Control Office. Once the determination has been made to grant expedited processing, the custodian shall process the FOIA request as soon as practicable.

(ii) If a request for expedited processing is denied, the person seeking expedited processing may file an application for review within five working days after the date of the written denial. The application for review and the

envelope containing it (if any) shall be captioned "Review of FOIA Expedited Proceeding Request." The application for review shall be delivered or mailed to the General Counsel. (For general procedures relating to applications for review, see §1.115 of this chapter.) The Commission shall act expeditiously on the application for review, and shall notify the custodian of records of the disposition of such an application for review.

(i)(1) If a request for inspection of records submitted to the Commission in confidence under §0.457(d) or §0.459 is granted, an application for review of the action may be filed by the person who submitted the records to the Commission or by a third party owner of the records. The application for review and the envelope containing it (if any) shall be captioned "Review of Freedom of Information Action." The application for review shall be filed within 10 working days after the date of the written ruling, shall be delivered or mailed to the General Counsel, and shall be served on the person who filed the request for inspection of records. The first day to be counted in computing the time period for filing the application for review is the day after the date of the written ruling. If an application for review is not filed within this period, the records will be produced for inspection. The person who filed the request for inspection of records may respond to the application for review within 10 working days after it is filed.

(2) If the request for inspection of records submitted to the Commission in confidence under §0.457(d) or §0.459 is partially granted and partially denied, the person who submitted the records to the Commission, a third party owner of the records and the person who filed the request for inspection of those records may file an application for review within the 10 working days after the date of the written ruling. The application for review and the envelope containing it (if any) shall be captioned "REVIEW OF FREEDOM OF INFORMATION ACTION." The application for review shall be delivered or mailed to the General Counsel. If either person files an application for re-

view, it shall be served upon the other person.

(3) If an application for review is denied, the person filing the application for review will be notified in writing and advised of their rights.

(4) If an application for review filed by the person who submitted the records to the Commission or who owns the records is denied, or if the records are made available on review which were not initially made available, the person who submitted the records to the Commission or who owns the records will be afforded 10 working days from the date of the written ruling in which to move for a judicial stay of the Commission's action. The first day to be counted in computing the time period for seeking a judicial stay is the day after the date of the written ruling. If a motion for stay is not made within this period, the record will be produced for inspection.

(j) Except as provided in paragraph (i) of this section, an application for review of an initial action on a request for inspection may be filed only by the person who made the request. The application shall be filed within 30 days after the date of the written ruling by the custodian of records, and shall be captioned, "Review of Freedom of Information Action." The envelope (if any) shall also be so captioned. The application shall be delivered or mailed to the General Counsel and shall be served on the person (if any) who originally submitted the materials to the Commission. That person may file a response within 10 working days after the application for review is filed. If the records are made available on review, the person who submitted them to the Commission (if any) will be afforded 10 working days after the date of the written ruling to seek a judicial stay. See paragraph (i) of this section. The first day to be counted in computing the time period for filing the application for review or seeking a judicial stay is the day after the date of the written ruling. (For general procedures relating to applications for review, see §1.115 of this chapter.)

(k) The Commission will make every effort to act on an application for review of an action on a request for inspection of records within 20 working

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days after it is filed. See, however, paragraph (i) of this section. If it is not possible to locate the records and to determine whether they should be made available for inspection within 20 working days, the General Counsel may, in the following circumstances and to the extent time has not been extended under paragraphs (g) (1)(i), (ii), or (iii) of this section, extend the time for action up to 10 working days. (The total period of extensions taken under this paragraph and under paragraph (g) of this section without the consent of the person who submitted the request shall not exceed 10 working days.):

(1) It is necessary to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) It is necessary to search for, collect and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) It is necessary to consult with another agency having a substantial interest in the determination of the request or among two or more components of the Commission having substantial subject matter interest therein.

If these circumstances are not present or if it is not possible to locate the records and make the determination within the extended period, the person who made the request will be advised of his/her rights and asked to consent to an extension or further extension. If the requester or person who made the request agrees to an extension, the General Counsel will confirm the agreement in a letter specifying the length of the agreed-upon extension. If the requestor or person who made the request does not agree to an extension, the Commission will continue to search for and/or assess the record and will advise the person who made the request of further developments; but that person may file a complaint in an appropriate United States district court.

(l) Subject to the application for review and judicial stay provisions of paragraphs (h) and (i) of this section, if the request is granted, the records will be produced for inspection at the earliest possible time.

(m) Staff orders and letters denying requests for inspection are signed by the official (or officials) who give final approval of their contents. If a request is denied by the Commission, notice of denial will set forth the names of the Commissioners participating in the decision.

(n) Records shall be inspected within 7 days after notice is given that they have been located and are available for inspection. After that period, they will be returned to storage, and additional charges may be imposed for again producing them.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 397; 47 FR 0.231(d))

[40 FR 39507, Aug. 28, 1975, as amended at 40 FR 59439, Dec. 24, 1975; 45 FR 85028, Dec. 24, 1980; 49 FR 13367, Apr. 4, 1984; 49 FR 38122, Sept. 27, 1984; 53 FR 39093, Oct. 5, 1988; 55 FR 8951, Mar. 9, 1990; 55 FR 9445, Mar. 14, 1990; 62 FR 51797, Oct. 3, 1997; 63 FR 25778, 25779, May 11, 1998; 63 FR 44168, Aug. 18, 1998; 64 FR 55163, Oct. 12, 1999]

§0.463 Demand by competent authority for the production of documents or testimony concerning information contained therein.

(a) In the event that a demand (subpoena, order or other demand) is made by a court or other competent authority outside the Commission for the production of records or files or for testimony concerning information contained therein, the Managing Director shall promptly be advised of such demand, the nature of the papers or information sought, and all other relevant facts and circumstances. The Commission will thereupon issue such instructions as it may deem advisable.

(b) Unless specifically authorized to produce such records or files or to testify with respect thereto, any officer or employee of the Commission who is served with a demand for the production of records or files or testimony concerning the same, shall appear in response to the demand and respectfully decline to produce such records or files or to testify concerning them, basing the refusal upon this rule.

(Secs. 4(i), 303(n), Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(n); 47 CFR 0.231(d))

[49 FR 13367, Apr. 4, 1984]